

**VIRGINIA WASTE MANAGEMENT BOARD
ENFORCEMENT ACTION
ORDER BY CONSENT
ISSUED TO THE
COUNTY OF CRAIG
FOR
CRAIG COUNTY SANITARY LANDFILL
PERMIT NO. 108**

SECTION A: Purpose

This is a Consent Order issued under the authority of Section 10.1-1455 of the Code of Virginia between the Virginia Waste Management Board and the County of Craig, to resolve certain alleged violations of the Virginia Waste Management Act and the Virginia Solid Waste Management Regulations.

SECTION B: Definitions

Unless the context clearly indicates otherwise, the following words and terms have the meanings assigned to them below:

1. “Va. Code” means the Code of Virginia (1950), as amended.
2. “Order” means this document, termed a Consent Order, under the authority of the Virginia Waste Management Act.
3. “Waste Board” means the Virginia Waste Management Board, a permanent Citizens’ Board of the Commonwealth of Virginia, described in Va. Code §§ 10.1-1401 and 10.1-1184.
4. “the County” means the County of Craig, a political sub-division of the Commonwealth of Virginia.
5. “CCSLF” or “the Facility” means the Craig County Sanitary Landfill.

6. "DEQ" means the Virginia Department of Environmental Quality, an independent administrative agency within the executive branch of the Commonwealth of Virginia, as described in Va. Code § 10.1-1183.
7. "WCRO" means DEQ's West Central Regional Office located in Roanoke, Virginia.
8. "Director" means the Director of DEQ, whose powers and duties are described in Va. Code § 10.1-1185.
9. "VSWMR" means the Waste Board's Solid Waste Management Regulations, 9 VAC 20-80-10 et seq.
10. "SSI" means a statistically significant increase.
11. "ASD" means an alternate source demonstration.

SECTION C: Findings of Facts and Conclusions of Law

1. On May 18, 1973, the Virginia Department of Health (the predecessor of DEQ for regulation of solid waste management facilities) issued Solid Waste Permit No. 108 to the County for operation of the CCSLF. The CCSLF is located off State Route #609, in the Jefferson National Forest, approximately 2.5 miles northeast of the Town of New Castle, VA.
2. Four independent background monitoring events were completed by July 30, 1996. Semiannual detection monitoring has since been continuing at the facility pursuant to 9 VAC 20-80-250.D of the VSWMR.
3. Beginning in 1997, the facility and DEQ (through annual report reviews) have observed SSIs over background levels for various inorganics including Barium, Cadmium, Copper, Vanadium, Arsenic, Chromium, Nickel, and Zinc.
4. 9 VAC 20-80-250.D.5.3.b of the VSWMR pertaining to detection monitoring requires a facility to begin assessment monitoring within 90 days of observing SSIs. The facility may pursue an alternate source demonstration ("ASD") within the 90 days but if the ASD is not submitted or approved, the facility must begin an assessment monitoring program.
5. The DEQ has instructed the facility on at least fifteen occasions, since 1997, to begin an assessment monitoring program.
6. The facility submitted an ASD on April 3, 2000 for cadmium and the DEQ approved the ASD for cadmium on June 5, 2000. The facility has submitted other ASDs but the DEQ has not approved them. An ASD was submitted to the Department in December 2002 and the ASD was not approved, by letter, on April 2, 2003.

7. The County's groundwater consultant has submitted a report to DEQ entitled Alternate Source Demonstration Work Plan, Craig County Landfill VDEQ Permit No. 108, DAA Job No. 7215-11 ("Work Plan"), on June 9, 2003.
8. By letter dated October 8, 2003, DEQ advised the County's groundwater consultant that the proposed investigation activities in the Work Plan could proceed provided that the DEQ comments listed in the letter be addressed and incorporated into the Work Plan. Accordingly, the Work Plan, amended with the DEQ comments, is hereby incorporated into and becomes an enforceable part of this Order. The ASD report will be submitted within 90 days of the effective date of this Order.
9. At the conclusion of the work performed under the Order, DEQ will formally approve or disapprove the County's ASD which will determine whether assessment monitoring is required at the CCSLF or if the County can remain under detection monitoring. Should DEQ's decision be adverse to the County, DEQ acknowledges that the County reserves its rights regarding hearings and appeals under the Virginia Administrative Process Act (Va. Code §§ 2.2-4000 *et seq.*).

SECTION D: Agreement and Order

Accordingly, the Board, by virtue of the authority granted it in Va. Code § 10.1-1455 orders the County of Craig, and the County of Craig agrees to implement the approved Work Plan in accordance with the approved schedule for ASD submittal and DEQ's conditions of approval. The Board and the County of Craig acknowledge that the SSIs which form the basis for this Order may recur prior to completion of the actions required under the Order.

SECTION E: Administrative Provisions

1. This Order only addresses and resolves those violations specifically identified herein, including those matters addressed in the Notice of Violation issued to the County on March 12, 2003. This Order shall not preclude the Board or the Director from taking any action authorized by law, including but not limited to: (1) taking any action authorized by law regarding any additional, subsequent, or subsequently discovered violations; (2) seeking subsequent remediation of the facility as may be authorized by law; or (3) taking subsequent action to enforce the Order. This Order shall not preclude appropriate enforcement actions by other federal, state, or local regulatory authorities for matters not addressed herein.
2. For purposes of this Order and subsequent actions with respect to this Order, the County admits the jurisdictional allegations, factual findings, and conclusions of law contained herein.
3. The County declares it has received fair and due process under the Administrative Process Act, Va. Code §§ 2.2-4000 *et seq.*, and the Virginia Waste Management Act and it waives

the right to any hearing or other administrative proceeding authorized or required by law or regulation, and to any judicial review of any issue of fact or law contained herein. Nothing herein shall be construed as a waiver of the right to any administrative proceeding for, or to judicial review of, any and all other facts and conclusions of law, including any action taken by the Board to enforce this Order.

4. Failure by the County to comply with any of the terms of this Order shall constitute a violation of an order of the Board. Nothing herein shall waive the initiation of appropriate enforcement actions or the issuance of additional orders as appropriate by the Board or the Director as a result of such violations. Nothing herein shall effect appropriate enforcement actions by any other federal, state, or local regulatory authority.
5. If any provision of this Order is found to be unenforceable for any reason, the remainder of the Order shall remain in full force and effect.
6. The County shall be responsible for failure to comply with any of the terms and conditions of this Order unless compliance is made impossible by earthquake, flood, other acts of God, war, strike, or such other occurrence. The County shall show that such circumstances were beyond its control and not due to a lack of good faith or diligence on its part. The County shall notify the WCRO Regional Director in writing when circumstances are anticipated to occur, are occurring, or have occurred that may delay compliance or cause noncompliance with any requirement of the Order. Such notice shall set forth:
 - a. The reasons for the delay or noncompliance;
 - b. The projected duration of any such delay or noncompliance;
 - c. The measures taken and to be taken to prevent or minimize such delay or noncompliance; and
 - d. The timetable by which such measures will be implemented and the date full compliance will be achieved.

Failure to so notify the WCRO Regional Director within 72 hours of learning of any condition above, which the County intends to assert will result in the impossibility of compliance, shall constitute a waiver of any claim to inability to comply with a requirement of this Order.

7. This Order is binding on the parties hereto, their successors in interest, designees and assigns, jointly and severally.
8. This Order shall become effective upon execution by both the Director or his designee and the County. Notwithstanding the foregoing, the County agrees to be bound by any compliance date which precedes the effective date of this Order.

9. This Order shall continue in effect until the Director or Board terminates the Order in his or its sole discretion upon 30 days written notice to the County. The County may petition the Director to terminate the Order following completion of all actions required under the Order. Termination of this Order, or any obligation imposed in this Order, shall not operate to relieve the County from its obligation to comply with any statute, regulation, permit condition, other order, certification, standard, or requirement otherwise applicable.

10. By the signature below, the County voluntarily agrees to this issuance of this Order.

And it is so ORDERED this _____ day of _____, 2003.

Robert G. Burnley, Director
Department of Environmental Quality

The County of Craig voluntarily agrees to the issuance of this Order.

By: _____
Larry V. Moore, County Administrator
County of Craig

Date: _____

Commonwealth of Virginia
City/County of _____

The foregoing document was signed and acknowledged before me this ____ day of _____, 2002, by Larry V. Moore who is the County Administrator of the County of Craig.

Notary Public

My commision expires: _____.